



CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
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2004 Companion to “California Tenants – A Guide to Residential Tenants’ and Landlords’ Rights and Responsibilities”

January, 2004

This updates the 2003 edition of *California Tenants* to include changes to landlord-tenant laws made by the California Legislature in 2003. These changes took effect on January 1, 2004. As you read the 2003 booklet, refer to the following new and revised text. *California Tenants* on the Department of Consumer Affairs’ Web site labeled “With 2004 Updates” includes the contents of this companion document.

cover and inside cover, replace names with:

Arnold Schwarzenegger, Governor
Fred Aguiar, Secretary, State and Consumer Services Agency
Charlene Zettel, Director, Department of Consumer Affairs

LOOKING FOR A RENTAL UNIT

UNLAWFUL DISCRIMINATION

page 8, replace paragraph that begins “Under California law” with the following revised paragraph:

Under California law, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against a person or harass a person because of the person's race, color, religion, sex (including gender and perception of gender), sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability.²⁹ California law also prohibits discrimination based on any of the following:

²⁹ *Government Code Sections 12926(p) (revised effective January 1, 2004), 12927(e), 12955(a),(d). Government Code Section See Fair Employment and Housing Act, Government Code Section 12900 and following; federal Fair Housing Act, 42 United States Code Section 3601 and following.*

EXAMPLES OF UNLAWFUL DISCRIMINATION

page 9, replace paragraph that begins “Unlawful housing discrimination” with the following revised paragraph:

Unlawful housing discrimination can take a variety of forms. Under California's Fair Employment and Housing Act and Unruh Civil Rights Act, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against any person because of the person's race, color, religion, sex (including gender and perception of gender), sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, medical condition or age in any of the following ways:

replace footnote 31 with:

³¹ *Government Code Sections 12926(p) (revised effective January 1, 2004), 12927(c)(1),(e), 12948, 12955(d), Civil Code Sections 51, 51.2.*

BEFORE YOU AGREE TO RENT

SPANISH-LANGUAGE TRANSLATION OF PROPOSED RENTAL AGREEMENT

page 12, replace entire section with the following revised section:

TRANSLATION OF PROPOSED RENTAL AGREEMENT

A landlord and a tenant may negotiate primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean for the rental, lease, or sublease of a rental unit. In this situation, the landlord must give the tenant a written translation of the proposed lease or rental agreement in the language used in the negotiation *before* the tenant signs it.⁴⁸ This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less.

The landlord must give the tenant the written translation of the lease or rental agreement in one of these languages whether or not the tenant requests it. It is never sufficient for the landlord to give the written translation of the lease or rental agreement to the tenant *after* the tenant has signed it.

However, the landlord is not required to give the tenant a written translation of the lease or rental agreement if all of the following are true:

- The Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking tenant negotiated the rental agreement through his or her own interpreter; and
- The tenant's interpreter is able to speak fluently and read with full understanding English, as well as Spanish, Chinese, Tagalog, Vietnamese or Korean (whichever was used in the negotiation); and
- The interpreter is not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through the landlord.

If a landlord who is required to provide a written translation of a lease or rental agreement in one of these languages fails to do so, the tenant can rescind (cancel) the agreement.⁴⁹

⁴⁸ *Civil Code Section 1632(b), revised effective January 1, 2004. The purpose of this law is to ensure that the Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking person has a genuine opportunity to read the written translation of the proposed agreement that has been negotiated primarily in one of these languages, and to consult with others, before signing the agreement.*

⁴⁹ *Civil Code Section 1632(k), revised effective January 1, 2004. See Civil Code Section 1688 and following on rescission of contracts.*

LIVING IN THE RENTAL UNIT

WHEN CAN THE LANDLORD ENTER THE RENTAL UNIT?

pages 22-23, replace entire section with the following revised section:

California law states that a landlord can enter a rental unit only for the following reasons:

- In an emergency.
- When the tenant has moved out or has **abandoned** the rental unit.
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements.

- To show the rental unit to prospective tenants, purchasers, or lenders, to provide entry to contractors or workers who are to perform work on the unit, or to conduct an **initial inspection** before the end of the tenancy (see Initial Inspection sidebar, page 37).
- If a court order permits the landlord to enter.⁸⁷
- If the tenant has a waterbed, to inspect the installation of the waterbed when the installation has been completed, and periodically after that to assure that the installation meets the law's requirements.⁸⁸

The landlord or the landlord's agent must give the tenant reasonable advance notice in writing before entering the unit, and can enter only during normal business hours (generally, 8 a.m. to 5 p.m. on weekdays). The notice must state the date, approximate time and purpose of entry.^{88a} However, advance written notice is not required under any of the following circumstances:

- To respond to an emergency.
- The tenant has moved out or has abandoned the rental unit.
- The tenant is present and consents to the entry at the time of entry.
- The tenant and landlord have agreed that the landlord will make repairs or supply services, and have agreed orally that the landlord may enter to make the repairs or supply the services. The agreement must include the date and approximate time of entry, which must be within one week of the oral agreement.^{88b}

The landlord or agent may use any one of the following methods to give the tenant written notice of intent to enter the unit. The landlord or agent may:

- Personally deliver the notice to the tenant; or
- Leave the notice at the rental unit with a person of suitable age and discretion (for example, a roommate or a teenage member of the tenant's household); or
- Leave the notice on, near or under the unit's usual entry door in such a way that it is likely to be found; or
- Mail the notice to the tenant.⁸⁹

The law considers 24 hours' advance written notice to be reasonable in most situations.

If the notice is mailed to the tenant, mailing at least six days before the intended entry is presumed to be reasonable, in most situations.⁹⁰ The tenant can consent to shorter notice and to entry at times other than during normal business hours.

Special rules apply if the purpose of the entry is to show the rental to a purchaser. In that case, the landlord or the landlord's agent may give the tenant notice orally, either in person or by telephone. The law considers 24 hours' notice to be reasonable in most situations. However, before oral notice can be given, the landlord or agent must first have notified the tenant in writing that the rental is for sale and that the landlord or agent may contact the tenant orally to arrange to show it. This written notice must be given to the tenant within 120 days of the giving of the oral notice. The notice must state the date, approximate time and purpose of entry.⁹¹ The landlord or agent may enter only during normal business hours, unless the tenant consents to entry at a different time.⁹² When the landlord or agent enters the rental, he or she must leave written evidence of entry, such as a business card.⁹³

The landlord cannot abuse the right of access allowed by these rules, or use this right of access to harass (repeatedly disturb) the tenant. Also, the law prohibits a landlord from significantly and intentionally violating these access rules to attempt to influence the tenant to move from the rental unit.^{93a}

If your landlord violates these access rules, talk to the landlord about your concerns. If that is not successful in stopping the landlord's misconduct, send the landlord a formal letter asking the landlord to strictly observe the access rules stated above. If the landlord continues to violate these rules, you can talk to an attorney or a legal aid organization, or file suit in small claims court to recover damages that you have suffered due to the landlord's misconduct. If the landlord's violation of these rules was significant and intentional, and the landlord's purpose was to influence you to move from the rental unit, you can sue the landlord in small claims court for a civil penalty of up to \$2,000 for each violation.^{93b}

⁸⁷ *Civil Code Section 1954(a), revised effective January 1, 2004.*

⁸⁸ *[no change]*

^{88a} *Civil Code Sections 1954(b),(d)(1), revised effective January 1, 2004.*

^{88b} *Civil Code Sections 1954(d), (e), revised effective January 1, 2004.*

⁸⁹ *Civil Code Section 1954(d)(1), revised effective January 1, 2004.*

⁹⁰ *Civil Code Section 1954(d)(1), revised effective January 1, 2004.*

⁹¹ *Civil Code Section 1954(d)(2), revised effective January 1, 2004.*

⁹² *Civil Code Section 1954(b), revised effective January 1, 2004.*

⁹³ *Civil Code Section 1954(d)(2), revised effective January 1, 2004.*

^{93a} *Civil Code Section 1940.2(a)(4), effective January 1, 2004.*

^{93b} *Civil Code Section 1940.2(b), effective January 1, 2004.*

DEALING WITH PROBLEMS

Lawsuit for damages as a remedy

page 31, replace entire section with the following revised section:

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation are other methods of resolving disputes about the condition of a rental unit (see page 53).

A tenant has another option: filing a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in the rental unit in a timely manner.¹³⁵ This kind of lawsuit can be filed in small claims court or superior court, depending on the amount demanded in the suit. The tenant can file this kind of lawsuit without first trying another remedy, such as the repair and deduct remedy, as long as all of the conditions listed below have been met.

If the tenant wins the lawsuit, the court may award the tenant his or her actual damages, plus "special damages" in an amount ranging from \$100 to \$5,000.¹³⁶ "Special damages" are costs that the tenant incurs, such as the cost of a motel room, because the landlord did not repair defects in the rental unit.

The court also may order the landlord to abate (stop or eliminate) a nuisance and to repair any substandard condition that significantly affects the health and safety of the tenant.¹³⁷ For example, a court could order the landlord to repair a leaky roof, and could retain jurisdiction over the case until the roof is fixed.

In order for a tenant to win such a lawsuit against the landlord, all of the following conditions must be met:¹³⁸

- The rental unit has serious habitability defects. That is, the rental unit contains a lead hazard that endangers the occupants or the public; or substantially lacks any of the minimum requirements for habitability listed in the eight categories on page 25; or has been declared substandard because, for example, a structural hazard, inadequate sanitation, or a nuisance exists that endangers the health, life, safety, property, or welfare of the occupants or the public; and
- A housing inspector has inspected the premises and has given the landlord or the landlord's agent written notice of the landlord's obligation to repair the substandard conditions or abate the nuisance; and
- The nuisance or substandard conditions continue to exist 35 days after the housing inspector mailed the notice to the landlord or agent, and the landlord does not have good cause for failing to make the repairs; and
- The nuisance or substandard conditions were not caused by the tenant or the tenant's family, guests or pets; and
- The landlord collects or demands rent, issues a notice of rent increase, or issues a three-day notice to pay rent or quit (see pages 43-44) after all of the above conditions have been met.

In addition to recovering money damages, the party who wins the lawsuit is entitled to recover his or her costs of bringing the suit (for example, court costs), plus reasonable attorney's fees as awarded by the court.¹³⁹

To prepare for filing this kind of lawsuit, the tenant should take all of these basic steps:

- The tenant should notify the landlord in writing about the conditions that require repair. (See "Giving the landlord notice," page 31.) The rental unit must have serious habitability defects that were not caused by the tenant's family, guests, or pets.
- The notice should specifically describe the defects and the repairs that are required.
- The notice should give the landlord a reasonable period of time to make the repairs.
- If the landlord doesn't make the repairs within a reasonable time, the tenant should contact the local city or county building department, health department, or local housing agency and request an inspection.
- The housing inspector must inspect the rental unit.
- The housing inspector must give the landlord or the landlord's agent written notice of the repairs that are required.
- The substandard conditions must continue to exist 35 days after the housing inspector mailed the notice to the landlord or landlord's agent. The landlord then must collect or demand rent, raise the rent, or serve a three-day notice to pay rent or quit.
- The tenant should gather evidence of the substandard conditions (for example, photographs or videos, statements of witnesses, inspection reports) so that the tenant can prove his or her case in court.

- The tenant should discuss the case with a lawyer, legal aid organization, tenant program, or housing clinic in order to understand what the lawsuit is likely to accomplish, and also the risks involved.

¹³⁵ *Civil Code Section 1942.4, revised effective January 1, 2004.*

¹³⁶ *Civil Code Section 1942.4(b)(1), revised effective January 1, 2004.*

¹³⁷ *[no change]*

¹³⁸ *Civil Code Section 1942.4(a), revised effective January 1, 2004. See Health & Safety Code Sections 17920.3, 17920.10.*

¹³⁹ *Civil Code Section 1942.4(b)(2), revised effective January 1, 2004, Code of Civil Procedure Section 1174.21, effective January 1, 2004.*

DEALING WITH PROBLEMS

page 33, after the section DEMOLITION OF DWELLING, insert the following new section:

INFLUENCING THE TENANT TO MOVE

California law protects a tenant from retaliation by the landlord because the tenant has lawfully exercised a tenant right (see pages 50-51). In addition, recent legislation makes it unlawful for a landlord to attempt to influence a tenant to move by doing any of the following:

- Engaging in conduct that constitutes theft or extortion.
- Using threats, force or menacing conduct that interferes with the tenant's quiet enjoyment of the rental unit. (The conduct must be of a nature that would create the fear of harm in a reasonable person.)
- Committing a significant and intentional violation of the rules limiting the landlord's right to enter the rental unit (see pages 22-23).^{144a}

A landlord does not violate the law by giving a tenant a warning notice, in good faith, that the tenant's or a guest's conduct may violate the lease, rental agreement, rules or laws. The notice may be oral or in writing. The law also allows a landlord to give a tenant an oral or written explanation of the lease, rental agreement, rules or laws in the normal course of business.^{144b}

If a landlord engages in unlawful behavior as described above, the tenant may sue the landlord in small claims court or superior court. If the tenant prevails, the court may award him or her a civil penalty of up to \$2,000 for each violation.^{144c} Keep in mind, however, that a lawsuit is not always a good solution. If you are faced with actions such as described above, try to assess the situation realistically. You may want to discuss the situation with a trusted friend, a tenant advisor, or a lawyer who represents tenants. If you are convinced that you cannot work things out with the landlord, then consider your legal remedies.

^{144a} *Civil Code Section 1940.2(a), effective January 1, 2004.*

^{144b} *Civil Code Section 1940.2(c), effective January 1, 2004.*

^{144c} *Civil Code Section 1940.2(b), effective January 1, 2004.*

MOVING OUT

REFUNDS OF SECURITY DEPOSITS

page 36, replace paragraph that begins “Under California law” with all of the following:

Under California law, within 21 calendar days after you move, your landlord must either:

- Send you a full refund of your security deposit, or
- Mail or personally deliver to you an itemized statement that lists the amounts of any deductions from your security deposit and the reasons for the deductions, together with a refund of any amounts not deducted.¹⁶⁵

The landlord also must send you copies of receipts for the charges that the landlord incurred to repair or clean the rental unit and that the landlord deducted from your security deposit. The landlord must include the receipts with the itemized statement.^{165a} The landlord must follow these rules:

- **If the landlord or the landlord’s employees did the work** – The itemized statement must describe the work performed, including the time spent and the hourly rate charged. The hourly rate must be reasonable.
- **If another person or business did the work** – The landlord must provide you copies of the person’s or business’ invoice or receipt. The landlord must provide the person’s or business’ name, address and telephone number on the invoice or receipt, or in the itemized statement.
- **If the landlord deducted for materials or supplies** – The landlord must provide you a copy of the invoice or receipt. If the item used to repair or clean the unit is something that the landlord purchases regularly or in bulk, the landlord must reasonably document the item’s cost (for example, by an invoice, a receipt or a vendor’s price list).^{165b}
- **If the landlord made a good faith estimate of charges** – The landlord is allowed to make a good faith estimate of charges and include the estimate in the itemized statement in two situations: (1) the repair is being done by the landlord or an employee and cannot reasonably be completed within the 21 days, or (2) services or materials are being supplied by another person or business and the landlord does not have the invoice or receipt within the 21 days. In either situation, the landlord may deduct the estimated amount from your security deposit. In situation (2), the landlord must include the name, address and telephone number of the person or business that is supplying the services or materials.

Within 14 calendar days after completing the repairs or receiving the invoice or receipt, the landlord must mail or deliver to you a correct itemized statement, the invoices and receipts described above, and any refund to which you are entitled.^{165c}

The landlord must send the itemized statement, copies of invoices or receipts, and any good faith estimate to you at the address that you provide. If you do not provide an address, the landlord must send these documents to the address of the rental unit that you moved from.^{165d}

The landlord is not required to send you copies of invoices or receipts, or a good faith estimate, if the repairs or cleaning cost less than \$126 or if you **waive** your right to receive them.^{165e} If you wish to waive the right to receive these documents, you may do so by signing a waiver when you or the landlord gives the other a 30- or 60-day notice to end the tenancy (see pages 33-34), or when the landlord serves you a 3-day notice to end the tenancy (see pages 43-45), or after any of these notices. If you have a lease, you may waive this right no earlier

than 60 days before the lease ends. The waiver form given to you by the landlord must include the text of the security deposit law that describes your right to receive receipts.^{165f}

What if the repairs cost less than \$126 or you waived your right to receive copies of invoices, receipts and any good faith estimate? The landlord still must send you an itemized statement within 21 calendar days after you move, along with a refund of any amounts not deducted from your security deposit. When you receive the itemized statement, you may decide that you want copies of the landlord's invoices, receipts and any good faith estimate. You may request copies of these documents from the landlord within 14 calendar days after you receive the itemized statement. It's best to make this request both orally and in writing. Keep a copy of your letter or e-mail. The landlord must send you copies of invoices, receipts and any good faith estimate within 14 calendar days after he or she receives your request.^{165g}

¹⁶⁵ *Civil Code Section 1950.5(g)(1), revised effective January 1, 2004. The landlord has the option of providing you the itemized statement and any refund to which you are entitled when you or the landlord gives the other a 30- or 60-day notice to end the tenancy (see pages 33-34), or when the landlord serves you a 3-day notice to end the tenancy (see pages 43-45), or no earlier than 60 days before the end of a lease.*

^{165a} *Civil Code Section 1950.5(g)(2), effective January 1, 2004.*

^{165b} *Civil Code Section 1950.5(g)(2), effective January 1, 2004.*

^{165c} *Civil Code Section 1950.5(g)(3), effective January 1, 2004.*

^{165d} *Civil Code Section 1950.5(g)(6), effective January 1, 2004.*

^{165e} *Civil Code Section 1950.5(g)(4), effective January 1, 2004.*

^{165f} *Civil Code Sections 1950.5(g)(4)(B), effective January 1, 2004. Civil Code Section 1950.5(g)(2) describes the tenant's right to receive receipts. See Appendix 5 for the complete text of Civil Code § 1950.5 (the security deposit statute).*

^{165g} *Civil Code Sections 1950.5(g)(5), effective January 1, 2004.*

MOVING OUT

INITIAL INSPECTION BEFORE TENANT MOVES OUT sidebar

page 37, replace the paragraph that begins with “Beginning January 1, 2003” with the following revised paragraph:

The landlord must perform an initial inspection as described in this sidebar if the tenant requests it, but *cannot* make an initial inspection *unless* the tenant requests it. However, the landlord is not required to perform an initial inspection if the landlord has served the tenant with a three-day notice (an **eviction notice**) because the tenant has failed to pay the rent, violated a provision of the lease or rental agreement, materially damaged the property, committed a nuisance, or used the property for an unlawful purpose (see pages 43-45).^{167a}

^{167a} *Civil Code Section 1950.5(f)(1), revised effective January 1, 2004.*

Appendix 5 – TEXT OF CALIFORNIA’S SECURITY DEPOSIT STATUTE

page 65, replace paragraph (g) that begins “Within three weeks” with the following new paragraph (g):

(g) (1) No later than 21 calendar days after the tenant has vacated the premises, but not earlier than the time that either the landlord or the tenant provides a notice to terminate the tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

(2) Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as follows:

(A) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged.

(B) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement shall provide the tenant with the name, address, and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

(3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession within 21 calendar days after the tenant has vacated the premises, the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement. If the reason for the estimate is because the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the manner specified.

(4) The landlord need not comply with paragraph (2) or (3) if either of the following apply:

(A) The deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars (\$125).

(B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver shall only be effective if it is signed by the tenant at the same time or after a notice to terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of the Code of Civil

Procedure has been given, or no earlier than 60 calendar days prior to the expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2).

(5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3) when a tenant makes a request for documentation within 14 calendar days after receiving the itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days after receiving the request from the tenant.

(6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address provided by the tenant. If the tenant does not provide an address, mailings pursuant to this subdivision shall be sent to the unit that has been vacated.

Prepared by: Department of Consumer Affairs
Division of Legal Affairs
Legal Services Unit
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